

LAWS AND REGULATIONS

Related to the Practice of Respiratory Care

in the State of California

(includes amendments through 2002)

BUSINESS AND PROFESSIONS CODE

Division 2, Chapter 8.3

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Business and Professions Code Divisions 2, Chapter 8.3

§ 3700. Citation of act

This chapter may be cited as the "Respiratory Care Practice Act."

§ 3701. Legislative finding and declaration; Legislative intent

The Legislature finds and declares that the practice of respiratory care in California affects the public health, safety, and welfare and is to be subject to regulation and control in the public interest to protect the public from the unauthorized and unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care. The Legislature also recognizes the practice of respiratory care to be a dynamic and changing art and science, the practice of which is continually evolving to include newer ideas and more sophisticated techniques in patient care.

It is the intent of the Legislature in this chapter to provide clear legal authority for functions and procedures which have common acceptance and usage. It is the intent also to recognize the existence of overlapping functions between physicians and surgeons, registered nurses, physical therapists, respiratory care practitioners, and other licensed health care personnel, and to permit additional sharing of functions within organized health care systems. The organized health care systems include, but are not limited to, health facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, clinics, home health agencies, physicians' offices, and public or community health services.

§ 3702. Practice of respiratory care; Components; "Respiratory care protocols"

Respiratory care as a practice means a health care profession employed under the supervision of a medical director in the therapy, management, rehabilitation, diagnostic evaluation, and care of patients with deficiencies and abnormalities which affect the pulmonary system and associated aspects of cardiopulmonary and other systems functions, and includes all of the following:

- (a) Direct and indirect pulmonary care services that are safe, aseptic, preventative, and restorative to the patient.
- (b) Direct and indirect respiratory care services, including but not limited to, the administration of pharmacological and diagnostic and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative or diagnostic regimen prescribed by a physician and surgeon.
- (c) Observation and monitoring of signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing and
 - (1) determination of whether such signs, symptoms, reactions, behavior or general response exhibit abnormal characteristics;
 - (2) implementation based on observed abnormalities of appropriate reporting or referral or respiratory care protocols, or changes in treatment regimen, pursuant to a prescription by a

physician and surgeon or the initiation of emergency procedures.

(d) The diagnostic and therapeutic use of any of the following, in accordance with the prescription of a physician and surgeon: administration of medical gases, exclusive of general anesthesia; aerosols; humidification; environmental control systems and baromedical therapy; pharmacologic agents related to respiratory care procedures; mechanical or physiological ventilatory support; bronchopulmonary hygiene; cardiopulmonary resuscitation; maintenance of the natural airways; insertion without cutting tissues and maintenance of artificial airways; diagnostic and testing techniques required for implementation of respiratory care protocols; collection of specimens of blood; collection of specimens from the respiratory tract; analysis of blood gases and respiratory secretions.

(e) The transcription and implementation of the written and verbal orders of a physician and surgeon pertaining to the practice of respiratory care.

"Respiratory care protocols" as used in this section means policies and protocols developed by a licensed health facility through collaboration, when appropriate, with administrators, physicians and surgeons, registered nurses, physical therapists, respiratory care practitioners, and other licensed health care practitioners.

§ 3703. Settings for respiratory care

(a) The settings in which respiratory care may be practiced include licensed health care facilities, hospitals, clinics, ambulatory or home health care, physicians' offices, and public or community health services. Respiratory care may also be provided during the transportation of a patient, and under any circumstances where an emergency necessitates respiratory care.

(b) The practice of respiratory care shall be performed under the supervision of a medical director in accordance with a prescription of a physician and surgeon or pursuant to respiratory care protocols as specified in Section 3702.

§ 3704. Definitions

As used in this chapter, these terms shall be defined as follows:

- (a) "Board" means the Respiratory Care Board of California.
- (b) "Department" means the Department of Consumer Affairs.
- (c) "Medical director" means a physician and surgeon who is a member of a health care facility's active medical staff and who is knowledgeable in respiratory care.
- (d) "Respiratory care" includes "respiratory therapy" or "inhalation therapy," where those terms mean respiratory care.
- (e) "Respiratory therapy school" means a program reviewed and approved by the board.

§ 3705. Scope of authority to practice

Nothing in this chapter shall be construed as authorizing a respiratory care practitioner to practice medicine, surgery, or any other form of healing, except as authorized by this chapter.

§ 3706. Immunity from liability for rendering emergency care; Exception

A person licensed under this chapter who in good faith renders emergency care at the scene of an emergency which occurs outside both the place and the course of employment shall not be liable for any civil damages as the result of acts or omissions by the person in rendering the emergency care.

This section does not grant immunity from civil damages when the person is grossly negligent.

§ 3710. Respiratory Care Board

The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter.

This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

§ 3710.1. Public Protection

Protection of the public shall be the highest priority for the Respiratory Care Board of California in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

§ 3711. Members

The members of the board shall be the following: one physician and surgeon, four respiratory care practitioners, each of whom shall have practiced respiratory care and four public members who shall not be licensed by the board.

§ 3712. Appointment of members; Terms; Removal

The members of the board shall be appointed as follows:

(a) Two respiratory care practitioners and one public member shall be appointed by the Speaker of the Assembly.

(b) One physician and surgeon, one respiratory care practitioner, and one public member shall be appointed by the Senate Rules Committee.

(c) One respiratory care practitioner, and two public members shall be appointed by the Governor.

Appointments shall be made for four-year terms, expiring on the first day of June of each year, and vacancies shall be filled for the unexpired term.

No member shall serve for more than two consecutive terms.

Not more than two members of the board shall be appointed from the full-time faculty of any university, college, or other educational institution.

Annually, the board shall elect one of its members as president.

The appointing power shall have the authority to remove any member of the board from office for neglect of any duty required by law or for incompetency or unprofessional or dishonorable conduct.

§ 3713. Qualifications of public members

(a) The public members shall be appointed from persons having the following qualifications:

(1) Be a citizen of the United States of America.

(2) Be a resident of the State of California.

(3) Shall not be an officer or faculty member of any college, school, or institution engaged in respiratory therapy education.

(4) Shall not be licensed by the board or by any board under this division.

(5) Shall have no pecuniary interests in the provision of health care.

(b) The respiratory care practitioner members shall be appointed from persons licensed as respiratory care practitioners having the following qualifications:

(1) Be a citizen of the United States of America.

(2) Be a resident of the State of California.

(3) One respiratory care practitioner shall be an officer or faculty member of any college, school, or institution engaged in respiratory therapy education.

(4) Three respiratory care practitioners shall be involved in direct patient care.

(5) Have at least five years' experience in respiratory care or

respiratory therapy education, and have been actively engaged therein for at least three years immediately preceding appointment.

(c) The physician and surgeon member shall be appointed from persons having the following qualifications:

(1) Be a citizen of the United States of America.

(2) Be a resident of the State of California.

(3) Be a licensed practicing physician and surgeon in the State of California.

(4) Be knowledgeable in respiratory care.

§ 3714. Duty to examine applicants for licensure

It shall be the duty of the board to examine applicants for licensure as provided by this chapter, at the places and at the times designated by the board in its discretion.

§ 3715. Payment of expenses

Each member of the board shall receive a per diem and expenses as provided in Section 103.

§ 3716. Authority to hire employees

The board may employ an executive officer exempt from civil service and, subject to the provisions of law relating to civil service, clerical assistants and, except as provided in Section 159.5, other employees as it may deem necessary to carry out its powers and duties.

This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

§ 3717. Authority to make inspections of and require reports from hospitals or facilities

(a) The board, or any licensed respiratory care practitioner, enforcement staff, or investigative unit appointed by the board, may inspect, or require reports from, a general or specialized hospital or any other facility or corporation providing respiratory care, treatment, or services and the respiratory care staff thereof, with respect to the respiratory care, treatment, services, or facilities provided therein, or the employment of staff providing the respiratory care, treatment, or services, and may inspect and copy respiratory care patient records with respect to that care, treatment, services, or facilities. The authority to make inspections and to require reports as provided by this section is subject to the restrictions against disclosure contained in Section 2225. Those persons may also inspect and copy employment records relevant to an official investigation provided that the written request to inspect the records specifies the portion of the records to be inspected.

(b) The failure of an employer to provide documents as required by this section is punishable by an administrative fine not to exceed ten thousand dollars (\$10,000) per violation. This penalty shall be in addition to, and not in lieu of, any other civil or criminal remedies.

§ 3718. Issuance, suspension, and revocation of licenses

The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.

§ 3719. Continuing education requirements; Submission of examination by licensee

Each person renewing his or her license shall submit proof satisfactory to the board that, during the preceding two-year period, he or she completed the required number of continuing education hours established by regulation of the board. Required continuing education shall not exceed 30 hours every two years.

Successful completion of an examination approved by the board may be submitted by a licensee for a designated portion of continuing education credit. The board shall determine the hours of credit to be granted for the passage of particular examinations.

§ 3720. Meetings

The board shall hold at least one regular meeting annually. The board may convene from time to time until its business is concluded. Special meetings may be held at the time and place the board may designate. Additional meetings may be held upon call of the president or at the written request of any two members of the board.

§ 3721. Notice of meetings

Notice of each regular or special meeting shall be sent to all board members 15 days prior to the meeting. In addition, notice of each meeting of the board shall be published in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

§ 3722. Adoption of rules and regulations; Compliance with Government Code

The board shall adopt any regulations as may be necessary to effectuate this chapter. In adopting rules and regulations, the board shall comply with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

§ 3730. Issuance of license; Filing of application; Fee

All licenses for the practice of respiratory care in this state shall be issued by the board, and all applications for those licenses shall be submitted directly to and filed with the board. Except as otherwise required by the director pursuant to Section 164, the license issued by the board shall describe the license holder as a "respiratory care practitioner licensed by the Respiratory Care Board of California."

Each application shall be accompanied by the application fee prescribed in Section 3775, shall be signed by the applicant, and shall contain a statement under oath of the facts entitling the applicant to receive a license without examination or to take an examination.

The application shall contain other information as the board deems necessary to determine the qualifications of the applicant.

§ 3731. Use of title or initials permitted by license holder

A person holding a license as a respiratory care practitioner issued by the board shall use the title "respiratory care practitioner" or the letters "RCP." The license as a respiratory care practitioner shall not authorize the use of the prefix "Dr.", or the word "doctor", or any suffix or affix indicating or implying that the licensed person is a doctor or a physician and surgeon.

The suffix "M.D." shall not be used unless the licensed practitioner is licensed as a physician and surgeon in this state.

§ 3732. Investigation of applicant

The board shall investigate each and every applicant for a license, before a license is issued, in order to determine whether or not the applicant has in fact the qualifications required by this chapter.

§ 3733. Qualifications of applicant; Denial of application by examining committee

(a) Every applicant for a license under this chapter shall, at the time of application, be a person over 18 years of age, have successfully completed courses of training equivalent to the minimum standard established in this chapter for approval by the board, and not have committed acts or crimes constituting grounds for denial of licensure.

(b) The board may order the denial of an application, or the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761.

§ 3735. Successful completion of written examination prerequisite to license

Except as otherwise provided in this chapter, no person shall receive a license under this chapter without first successfully passing an examination given under the direction of the board. The examination shall be in writing and shall be conducted under the regulations prescribed by the board.

§ 3735.3. Documentation required to sit for examination

An applicant for a license as a respiratory care practitioner may not be scheduled to sit for the examination until verification from the program director, in a form acceptable to the board, declaring that the applicant has completed his or her respiratory training program and has met all the educational requirements for the awarding of an associate degree is received in the board's office.

An official transcript from the educational institution's registrar's office shall be submitted to the board prior to the issuance of a license as a respiratory care practitioner.

§ 3735.5. Equivalent examination for credentialing

The requirements to pass the written examination shall not apply to an applicant who at the time of his or her application has passed, to the satisfaction of the board, an examination that is, in the opinion of the board, equivalent to the examination given in this state.

§ 3736. Uniform examination system

Examinations for a license as a respiratory care practitioner may be conducted by the board under a uniform examination system, and for that purpose the board may make any arrangements with organizations furnishing examination material as may in its discretion be desirable.

§ 3736.5. Examination statistics

The board's examination contractor shall provide to the board all examination pass-fail statistics for each approved respiratory therapy school.

§ 3737. Licensure of qualified applicant upon receipt of passing grade

Every applicant who is not otherwise disqualified as provided in this chapter and who receives a passing grade established by the board on the examination shall be granted a license.

§ 3739. Practice by graduate prior to receipt of license

(a)(1) Except as otherwise provided in this section, every graduate of an approved respiratory care program who has filed an initial respiratory care practitioner application with the board may, between the dates specified by the board, perform as a respiratory care practitioner applicant under the direct supervision of a respiratory care practitioner licensed in this state.

(2) During this period the applicant shall identify himself or herself only as a "respiratory care practitioner applicant."

(3) If for any reason the license is not issued, all privileges under this subdivision shall automatically cease on the date specified by the board.

(b) If an applicant fails to take the next available examination without good cause or fails to pass the examination and receive a license, all privileges under this section shall automatically cease on the date specified by the board.

(c) Notwithstanding subdivision (a), an applicant for licensure who was previously licensed by the board, but who allowed his or her license to expire for more than three years, shall be allowed to practice as a respiratory care practitioner applicant under the direct supervision of a respiratory care practitioner licensed in this state between the dates specified by the board. During this period, the applicant shall identify himself or herself only as a "respiratory care practitioner applicant." If for any reason the license is not issued, all privileges under this subdivision shall cease on the date specified by the board.

(d) No applicant for a respiratory care practitioner license shall be authorized to perform as a respiratory care practitioner applicant if cause exists to deny the license.

§ 3740. Minimum educational requirements of applicants; Applicant with foreign diploma or license; Approval of schools by examining committee

(a) Except as otherwise provided in this chapter, all applicants for licensure under this chapter shall have completed a board approved respiratory care program and been awarded a minimum of an associate degree.

(b) Notwithstanding subdivision (a), meeting the following qualifications shall be deemed equivalent to the required education:

(1) Enrollment in an approved baccalaureate degree program.

(2) Completion of science, general academic, and respiratory therapy course work commensurate with the requirements for an associate degree in subdivision (a).

(c) An applicant whose application is based on a diploma issued to the applicant by a foreign respiratory therapy school or a certificate or license issued by another state, district, or territory of the United States, shall furnish documentary evidence, satisfactory to the board, that he or she has completed a respiratory therapy school or a course of professional instruction equivalent to that required in subdivision (a), for a respiratory care practitioner applicant.

(d) Education programs for respiratory care that are accredited programs in public or private postsecondary education institutions or

universities accredited by a regional accreditation agency or association recognized by the United States Department of Education and the Commission on Accreditation of Allied Health Education Programs, as verified by the board biannually, may be considered approved programs by the board unless the board determines otherwise.

(e) A school shall give the director of a respiratory care program adequate release time to perform his or her administrative duties consistent with the established policies of the educational institution.

(f) Satisfactory evidence as to educational qualifications shall take the form of certified transcripts of the applicant's college record mailed directly to the board from the educational institution. However, the board may require an evaluation of educational credentials by an evaluation service approved by the board.

(g) At the board's discretion, it may waive its educational requirements if evidence is presented and the board deems it as meeting the current educational requirements that will ensure the safe and competent practice of respiratory care. This evidence may include, but is not limited to:

(1) Work experience.

(2) Good standing of licensure in another state.

(3) Previous good standing of licensure in the State of California.

(h) Nothing contained in this section shall prohibit the board from disapproving any respiratory therapy school, nor from denying the applicant if the instruction received by the applicant or the courses were not equivalent to that required by the board.

§ 3741. Services rendered by student in approved program; Designation as student

(a) During the period of any clinical training, respiratory care services may be rendered by a student enrolled in an approved respiratory care training program when these services are incidental to his or her course of study.

(b) A person engaged in a respiratory care training program as a student shall be identified only as a "student respiratory care practitioner."

§ 3742. Supervision of student respiratory care practitioner

During the period of any clinical training, a student respiratory care practitioner shall be under the direct supervision of a person holding a valid and current license issued under this chapter. "Under the direct supervision" means assigned to a respiratory care practitioner who is on duty and immediately available in the assigned patient care area.

§ 3750. Causes for suspension, revocation or probationary conditions

The board may order the suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

(a) Advertising in violation of Section 651 or Section 17500.

(b) Fraud in the procurement of any license under this chapter.

(c) Knowingly employing unlicensed persons who present themselves as licensed respiratory care practitioners.

(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

(e) Impersonating or acting as a proxy for an applicant in any examination given under this chapter.

(f) Negligence in his or her practice as a respiratory care practitioner.

(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

(h) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.

(i) The aiding or abetting of any person to engage in the unlawful practice of respiratory care.

(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

(k) Falsifying, or making grossly incorrect, grossly inconsistent, or unintelligible entries in any patient, hospital, or other record.

(l) Changing the prescription of a physician and surgeon, or falsifying verbal or written orders for treatment or a diagnostic regime received, whether or not that action resulted in actual patient harm.

(m) Denial, suspension, or revocation of any license to practice by another agency, state, or territory of the United States for any act or omission that would constitute grounds for the denial, suspension, or revocation of a license in this state.

(n) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the California Medical Board, the Board of Podiatric Medicine, the Board of Dental Examiners, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

(o) Incompetence in his or her practice as a respiratory care practitioner.

(p) A pattern of substandard care.

§ 3750.5. Additional grounds for denial, suspension, or revocation of license

In addition to any other grounds specified in this chapter, the board may deny, suspend, or revoke the license of any applicant or license holder who has done any of the following:

(a) Obtained or possessed in violation of law, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administered to himself or herself, or furnished or administered to another, any controlled substances as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 7 (commencing with Section 4210) of Chapter 9 of this code.

(b) Used any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 7 (commencing with Section 4210) of Chapter 9 of this code.

(c) Applied for employment or worked in any health care profession or environment while under the influence of alcohol.

(d) Been convicted of a criminal offense involving the consumption or self-administration of any of the substances described in subdivisions (a) and (b), or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a), in which event the record of the conviction is conclusive evidence thereof.

(e) Been committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in subdivisions (a), (b), and (c), in which event the court order of commitment or confinement is prima facie evidence of that commitment or confinement.

(f) Falsified, or made grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a).

§ 3750.51. Limitations period for filing accusation against licensee

(a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503

of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

§ 3750.6. Original pocket license or work permit to be produced for inspection

Upon request, every holder of a pocket license shall produce for inspection the original pocket license issued by the examining committee. A facsimile of the license is not sufficient for that purpose.

Upon request, every applicant issued a work permit shall produce for inspection the original permit issued by the examining committee. A facsimile of the work permit is not sufficient for that purpose. Failure to produce an original work permit shall constitute unauthorized practice.

§ 3751. Petition for reinstatement, modification, or termination of probation; Discretion of examining committee

(a) A person whose license has been revoked or suspended, or who has been placed on probation, may petition the board for reinstatement, modification, or termination of probation. The petition may be filed only after a period of time has elapsed, but not less than the following minimum periods from the effective date of the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license that has been revoked.

(2) At least two years for early termination of probation of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

(b) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from licensed health care practitioners who have personal knowledge of the professional activities of the petitioner since the disciplinary penalty was imposed. The board may accept or reject the petition.

(c) The petition may be heard by the board, or the board may assign the petition to an administrative law judge for hearing.

(d) The board, or the administrative law judge hearing the petition, may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the license was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the board or administrative law judge finds necessary.

(e) The board may deny the petition for reinstatement, reinstate the license without terms and conditions, require an examination for the reinstatement, restoration, or modification of probation, or reinstate the license with terms and conditions as it deems necessary. Where a petition is heard by an administrative law judge, the administrative law judge shall render a proposed decision to the board denying the petition for reinstatement, reinstating the license without terms and conditions, requiring an examination for the reinstatement, or reinstating the license with terms and conditions as he or she deems necessary. The board may take any action with respect to the proposed decision and petition as it deems appropriate.

(f) No petition shall be considered while the petitioner is under sentence for any criminal offense including any period during which

the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or a petition to revoke probation pending against the person. The board may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.

(g) Nothing in this section shall be deemed to alter Sections 822 and 823.

§ 3751.1. Petition to Terminate Probation - Special Provision

(a) Notwithstanding the time periods set forth in subdivision (a) of Section 3751, the holder of a conditional or probationary license issued prior to February 1, 2002, on grounds that did not include a violation of subdivision (e), (f), (h), (i), (k), (l), (n), (o), or (p) of Section 3750, a violation of Section 3752.6, or a violation of Section 3755, may submit a petition to terminate probation prior to December 31, 2003.

(b) This section shall be repealed on January 1, 2004, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends that date.

§ 3751.5. Time period prior to reapplication for licensure after denial for cause

Notwithstanding Section 489, a person whose application for licensure has been denied for cause may reapply to the board for licensure only after a period of three years has elapsed from the date of the denial.

§ 3752. Procedure on conviction of felony or other offense relating to professional qualifications

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

§ 3752.5. Crime involving bodily injury or attempted bodily injury

For purposes of Division 1.5 (commencing with Section 475), and this chapter, a crime involving bodily injury or attempted bodily injury shall be considered a crime substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

§ 3752.6. Crime involving sexual misconduct

For purposes of Division 1.5 (commencing with Section 475); and this chapter, a crime involving sexual misconduct or attempted sexual misconduct, whether or not with a patient, shall be considered a crime substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

§ 3752.7. Sexual contact with patient; Conviction of sexual offense; Revocation

Notwithstanding Section 3750, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge. For purposes of this section, the patient shall no longer be considered a patient of the respiratory care practitioner when the order for respiratory procedures is terminated, discontinued, or not renewed by the prescribing physician and surgeon.

§ 3753. Application of provisions of Administrative Procedure Act

The procedure in all matters and proceedings relating to the denial, suspension, or revocation of licenses under this chapter shall be governed by the provisions of the Administrative Procedure Act

§ 3753.1. Administrative disciplinary decision imposing terms of probation

(a) An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation.

(b) The board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section once a licensee has served his or her term of probation.

§ 3753.5. Payment of costs of investigation and prosecution of disciplinary action

(a) In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case. A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the official custodian of the record or his or her designated representative shall be prima facie evidence of the actual costs of the investigation and prosecution of the case.

(b) The costs shall be assessed by the administrative law judge and shall not be increased by the board; however, the costs may be imposed or increased by the board if it does not adopt the proposed decision of the case.

Where an order for recovery of costs is made and timely payment is not made as directed in the board's decision the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any practitioner directed to pay costs.

(c) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(d) (1) The board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew, for a maximum of one year, the license of any licensee who demonstrates financial hardship, through documentation satisfactory to the board, and who enters into a formal agreement with the board to reimburse the board within that one-year period for those unpaid costs.

§ 3753.7. Items included in costs of prosecution

For purposes of this chapter, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees.

§ 3754. Action of board after hearing

The board may deny an application for, or issue with terms and conditions, or suspend or revoke, or impose probationary conditions upon, a license in any decision made after a hearing, as provided in Section 3753.

§ 3754.5. Action against licensee obtaining license by fraud, misrepresentation or mistake

The board shall initiate action against any licensee who obtains a license by fraud or misrepresentation. The board shall take action against any licensee whose license was issued by mistake.

§ 3755. Action for unprofessional conduct

The board may take action against any respiratory care practitioner who is charged with unprofessional conduct in administering, or attempting to administer, direct or indirect respiratory care. Unprofessional conduct includes, but is not limited to, repeated acts of clearly administering directly or indirectly inappropriate or unsafe respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques, and violation of any provision of Section 3750. The board may determine unprofessional conduct involving any and all aspects of respiratory care performed by anyone licensed as a respiratory care practitioner. Any person who engages in repeated acts of unprofessional conduct shall be guilty of a misdemeanor and shall be punished by a fine of not more than one

thousand dollars (\$1,000), or by imprisonment for a term not to exceed six months, or by both that fine and imprisonment.

§ 3756. Fitness to practice; Professional competency examination; Petition of charges before board

(a) A respiratory care practitioner who provides respiratory care may be ordered to undergo a professional competency examination approved by the board if, after investigation and review by one or more respiratory care practitioner consultants of the board, there is reasonable cause to believe that the person providing respiratory care is unable or unwilling to practice respiratory care with reasonable skill and patient safety. Reasonable cause shall be determined by the board and may include, but shall not be limited to, the following:

(1) Negligence.

(2) A pattern of inappropriate direct or indirect administration of respiratory care protocols, procedures, therapeutic regimens, or diagnostic testing of monitoring techniques.

(3) An act of incompetence or negligence causing death or serious bodily injury.

(4) A pattern of substandard care.

(5) Violation of any provision of this chapter.

(b) The matter shall be presented by the board's executive officer or designee by way of a written petition detailing the reasonable cause. The petition shall contain all conclusions and facts upon which the presumption of reasonable cause is based. A copy of the petition shall be served on the person who shall have 45 days after receipt of the copy of the petition to file written opposition to the petition. Service of the petition and any order shall be in accordance with the methods of service authorized by subdivision (c) of Section 11505 of the Government Code.

(c) The board shall review the petition and any written opposition from the person who has charges brought against him or her, or the board may hold a hearing in accordance with the Administrative Procedure Act to determine if reasonable cause exists, as specified in subdivision (a). The person who has charges brought against him or her shall have the right to be represented at that hearing by a person of his or her choice. If the board is satisfied that reasonable cause exists that is considered by the board as unprofessional conduct, the board shall issue an order compelling the person who has charges brought against him or her to undergo an examination of professional competency, as measured by community standards. For purposes of this section, "community standards" means the statewide standards of the community of licensees. Failure to comply with the order duly served the person charged shall constitute unprofessional conduct for purposes of disciplinary proceedings and failure to pass the examination shall result in denial, suspension, or revocation of the license, or registration which shall be determined by the board in its discretion.

(d) If the board proceeds pursuant to Sections 3755 and 3756 and the person charged passes the professional competency examination administered, the board shall be precluded from filing an accusation of incompetency based solely on the circumstances giving rise to the reasonable cause for the examination.

(e) If the board determines there is insufficient cause to file an accusation based on the examination results, then all agency records of the proceedings, including the petition and order for the examination, investigative reports, if any, reports of staff or the board's consultants, and the reports of the examiners, shall be kept confidential and shall not be subject to discovery or subpoena.

(f) If no further proceedings are conducted to determine the person's fitness to practice during a period of five years from the date of the petition under Section 3756, then the agency shall purge and destroy all records pertaining to the proceeding.

§ 3757. Mental illness or chemical dependency

The board may refuse to issue a license or an authorization to work as a "respiratory care practitioner applicant" whenever it appears that the applicant may be unable to practice his or her profession safely due to mental illness or chemical dependency. The procedures set forth in Article 12.5 (commencing with Section 820) of Chapter 1 shall apply to any denial of a license or authorization pursuant to this section.

§ 3758. Report on suspension or termination for cause

(a) Any employer of a respiratory care practitioner shall report to the Respiratory Care Board the suspension or termination for cause of

any practitioner in their employ. The reporting required herein shall not act as a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800, and shall not be subject to discovery in civil cases.

(b) For purposes of the section, "suspension of termination for cause" is defined to mean suspension or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to such an extent that it impairs the ability to safely practice respiratory care.

(2) Unlawful sale of controlled substances or other prescription items.

(3) Patient neglect, physical harm to a patient, or sexual contact with a patient.

(4) Falsification of medical records.

(5) Gross incompetence or negligence.

(6) Theft from patients, other employees, or the employer.

(c) Failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed ten thousand dollars (\$10,000) per violation.

§ 3758.5. Reporting violations

If a licensee has knowledge that another person may be in violation of, or has violated, any of the statutes or regulations administered by the board, the licensee shall report this information to the board in writing and shall cooperate with the board in furnishing information or assistance as may be required.

§ 3758.6. Report on supervisor

(a) In addition to the reporting required under Section 3758, an employer shall also report to the board the name, professional licensure type and number, and title of the person supervising the licensee who has been suspended or terminated for cause, as defined in subdivision (b) of Section 3758. If the supervisor is a licensee under this chapter, the board shall investigate whether due care was exercised by that supervisor in accordance with this chapter. If the supervisor is a health professional, licensed by another licensing board under this division, the employer shall report the name of that supervisor and any and all information pertaining to the suspension or termination for cause of the person licensed under this chapter to the appropriate licensing board.

(b) The failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed ten thousand dollars (\$10,000) per violation.

§ 3759. No civil penalties

Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this chapter.

§ 3760. Unauthorized practice or use of title

(a) Except as otherwise provided in this chapter, no person shall engage in the practice of respiratory care, respiratory therapy, or inhalation therapy. For purposes of this section, engaging in the practice of respiratory care includes, but is not limited to, representations by a person whether through verbal claim, sign, advertisement, letterhead, business card, or other representation that he or she is able to perform any respiratory care service, or performance of any respiratory care service.

(b) No person who is unlicensed or whose respiratory care practitioner license has been revoked or suspended shall engage in the practice of respiratory care during the period of suspension or revocation, even though the person may continue to hold a certificate or registration issued by a private certifying entity.

(c) Except as otherwise provided in this chapter, no person may represent himself or herself to be a respiratory care practitioner, a respiratory therapist, a respiratory care technician, or an inhalation therapist, or use the abbreviation or letters "R.C.P.," "R.P.," "R.T.," or "I.T.," or use any modifications or derivatives of those abbreviations or letters without a current and valid license issued under this chapter.

(d) No respiratory care practitioner applicant shall begin practice as a "respiratory care practitioner applicant" pursuant to Section 3739 until the applicant meets the applicable requirements of this chapter and obtains a valid work permit.

§ 3761. License required for practice

(a) No person may represent himself or herself to be a respiratory

care practitioner without a license granted under this chapter, except as otherwise provided in this chapter.

(b) No person or corporation shall knowingly employ a person who holds himself or herself out to be a respiratory care practitioner without a license granted under this chapter, except as otherwise provided in this chapter.

§ 3762. Chapter not intended to limit authorized and customary duties

Nothing in this chapter is intended to limit preclude, or otherwise interfere with the practices of other licensed personnel in carrying out authorized and customary duties and functions.

§ 3763. Violations as misdemeanors; Punishment

Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment in a county jail not exceeding six months, or both, for each offense.

§ 3764. Application for injunction or order restraining unlawful conduct

Whenever any person has engaged or is about to engage in any acts or practices that constitute or will constitute an offense against this chapter, the superior court of any county, on application of the board, the Medical Board of California, or by 10 or more persons holding respiratory care practitioner licenses issued under this chapter, may issue an injunction or other appropriate order restraining that conduct. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that no undertaking shall be required in any action commenced by the board.

§ 3765. Acts not prohibited

This act does not prohibit any of the following activities:

(a) The performance of respiratory care which is an integral part of the program of study by students enrolled in approved respiratory therapy training programs.

(b) Self-care by the patient or the gratuitous care by a friend or member of the family who does not represent or hold himself or herself out to be a respiratory care practitioner licensed under the provisions of this chapter.

(c) The respiratory care practitioner from performing advances in the art and techniques of respiratory care learned through formal or specialized training.

(d) The performance of respiratory care by paramedical personnel who have been formally trained in these modalities and are duly licensed under the provisions of an act pertaining to their specialty.

(e) Respiratory care services in case of an emergency. "Emergency," as used in this subdivision, includes an epidemic or public disaster.

(f) Persons from engaging in cardiopulmonary research.

(g) Formally trained licensees and staff of child day care facilities from administering to a child inhaled medication as defined in Section 1596.798 of the Health and Safety Code.

3766. Unlicensed Personnel - Citation and Fines

(a) The board may issue a citation containing an order of abatement and civil penalties against a person who acts in the capacity of, or engages in the business of, a respiratory care practitioner in this state without having a license in good standing issued pursuant to this chapter.

(b) The board may issue a citation containing an order of abatement and civil penalties against a person employing or contracting with a person who acts in the capacity of, or engages in the business of, a respiratory care practitioner in this state without having a license in good standing issued pursuant to this chapter.

3767. Unlicensed Personnel - Cite and Fine Issuance

(a) The board shall issue a citation to a person and to his or her employer or contractor, if, upon inspection or investigation, either upon complaint or otherwise, the following conditions are met:

(1) The board has probable cause to believe that the person is acting in the capacity of, or engaging in the practice of, a respiratory care practitioner in this state without having a license in good standing issued pursuant to this chapter.

(2) The person is not otherwise exempted from the provisions of

this chapter.

(b) Each citation issued pursuant to subdivision (a) shall meet all of the following requirements:

(1) Be in writing and describe with particularity the basis of the citation.

(2) Contain an order of abatement and an assessment of a civil penalty in an amount not less than two hundred dollars (\$200) nor more than fifteen thousand dollars (\$15,000).

(c) A person served with a citation may appeal to the board within 15 calendar days after service of the citation with respect to any of the following:

(1) The violations alleged.

(2) The scope of the order of abatement.

(3) The amount of the civil penalty assessed.

(d) If, within 15 calendar days after service of the citation, the person cited fails to notify the board that he or she intends to appeal the citation, the citation shall be deemed a final order of the board and not subject to review by any court or agency. The board may extend the 15-day period for good cause.

(e) (1) If a person cited under this section notifies the board in a timely manner that he or she intends to contest the citation, the board shall afford an opportunity for a hearing.

(2) The board shall thereafter issue a decision, based on findings of fact, affirming, modifying, or vacating the citation, or directing other appropriate relief.

(f) With the approval of the board, the executive officer shall prescribe procedures for the issuance and appeal of a citation and procedures for a hearing under this section. The board shall adopt regulations covering the assessment of a civil penalty that shall give due consideration to the gravity of the violation, and any history of previous violations.

(g) The sanctions authorized under this section shall be separate from and in addition to, any other civil or criminal remedies.

3768. Unlicensed Personnel - Fine Collections

(a) After the exhaustion of the review procedures provided for in Section 3767, and as adopted by regulation, the board may apply to the appropriate superior court for both of the following:

(1) A judgment in the amount of the civil penalty.

(2) An order compelling the cited person to comply with the order of abatement.

(b) The application described in subdivision (a) shall include a certified copy of the final order of the board.

(c) The application described in subdivision (a) shall constitute a sufficient showing to warrant the issuance of the judgment and order.

(d) The board may employ collection agencies or other methods in order to collect civil penalties.

§ 3770. Records of proceedings; Registry of license holders; Publication and sale of list of practitioners

The department shall keep a record of its proceedings under this chapter, and a register of all persons licensed under it. The register shall show the name of every living licensed respiratory care practitioner, his or her last known place of residence, or address of record, and the date and number of his or her certificate as a respiratory care practitioner. The department shall, once every two years, compile a list of respiratory care practitioners authorized to practice respiratory care in the state. Any interested person is entitled to obtain a copy of that list upon application to the department and payment of an amount as may be fixed by the department, which amount shall not exceed the cost of the list so furnished.

§ 3771. Monthly report to Controller; Payment and credit of moneys received

Within 10 days after the beginning of each calendar month, the board shall report to the Controller the amount and source of all collections made from persons licensed or seeking to be licensed under this chapter, and all fines and forfeitures to which the board is entitled, and at the same time, pay all these sums into the State Treasury, where they shall be credited to the Respiratory Care Fund, which is hereby created and, notwithstanding Section 13340 of the Government Code, continuously appropriated for the purposes of this chapter.

§ 3772. Respiratory Care Fund

(a) There is established in the State Treasury the Respiratory Care

Fund. All collections from persons licensed or seeking to be licensed under this chapter shall be paid by the board into the fund after the report to the Controller at the beginning of each month of the amount and source of the collections.

§ 3773. Notification at time of application for renewal of license

At the time of application for renewal of a respiratory care practitioner license, the licensee shall notify the board of all of the following:

(a) Whether he or she has been convicted of any crime subsequent to the licensee's previous renewal.

(b) The name and address of the licensee's current employer or employers.

§ 3774. Renewal of license; Expiration

On or before the birthday of a licensed practitioner in every other year, following the initial licensure, the board shall mail to each practitioner licensed under this chapter, at the latest address furnished by the licensed practitioner to the executive officer of the board, a notice stating the amount of the renewal fee and the date on which it is due. The notice shall state that failure to pay the renewal fee on or before the due date and submit evidence of compliance with Sections 3719 and 3773 shall result in expiration of the license.

Each license not renewed in accordance with this section shall expire but may within a period of three years thereafter be reinstated upon payment of all accrued and unpaid renewal fees and penalty fees required by this chapter. The board may also require submission of proof of the applicant's qualifications, except that during the three-year period no examination shall be required as a condition for the reinstatement of any expired license that has lapsed solely by reason of nonpayment of the renewal fee.

§ 3775. Amount of fees

The amount of fees provided in connection with licenses or approvals for the practice of respiratory care shall be as follows:

(a) The application fee shall be established by the board at not more than three hundred dollars (\$300). The application fee for the applicant under subdivision (b) of Section 3740 shall be established by the board at not more than three hundred fifty dollars (\$350).

(b) The fees for any examination or reexamination required by the board shall be the actual cost to the board for developing, purchasing, grading, and administering each examination or reexamination.

(c) The initial license fee for a respiratory care practitioner shall be no more than three hundred dollars (\$300).

(d) For any license term beginning on or after January 1, 1999, the renewal fee shall be established at two hundred thirty dollars (\$230). The board may increase the renewal fee, by regulation, to an amount not to exceed three hundred thirty dollars (\$330). The board shall fix the renewal fee so that, together with the estimated amount from revenue, the reserve balance in the board's contingent fund shall be equal to approximately six months of annual authorized expenditures. If the estimated reserve balance in the board's contingent fund will be greater than six months, the board shall reduce the renewal fee. In no case shall the fee in any year be more than 10 percent greater than the amount of the fee in the preceding year.

(e) The delinquency fee shall be established by the board at not more than the following amounts:

(1) If the license is renewed not more than two years from the date of its expiration, the delinquency fee shall be 100 percent of the renewal fee in effect at the time of renewal.

(2) If the license is renewed after two years, but not more than three years, from the date of expiration of the license, the delinquency fee shall be 200 percent of the renewal fee in effect at the time of renewal.

(f) The duplicate license fee shall be seventy-five dollars (\$75).

(g) The endorsement fee shall be one hundred dollars (\$100).

(h) Costs incurred by the board in order to obtain and review documents or information related to the criminal history of, rehabilitation of, disciplinary actions taken by another state agency against, or acts of negligence in the practice of respiratory care by, an applicant or licensee, shall be paid by the applicant or licensee before a license will be issued or a subsequent renewal processed.

(i) Fees paid in any form other than check, money order, or cashier's check shall be subject to an additional processing charge equal to the board's actual processing costs.

(j) Fees incurred by the board to process return mail shall be paid by

the applicant or licensee for whom the charges were incurred.

(k) Notwithstanding any other provision of this chapter, the board, in its discretion, may reduce the amount of any fee otherwise prescribed by this section.

§ 3775.2. Fee for approval of providers of continuing education

(a) The fee for approval of providers of continuing education shall be established by the board at not more than the following:

(1) The initial application approval fee shall be seven hundred dollars (\$700).

(2) The annual renewal fee shall be three hundred fifty dollars (\$350).

(3) The fee for rereview or additional approval of any amendments to existing providers shall be three hundred fifty dollars (\$350).

(b) The delinquency fee for the annual renewal fee shall be 50 percent of the annual renewal fee.

§ 3775.3. Report of proposal to adopt or increase fee

The Respiratory Care Board of California shall report to the appropriate policy and fiscal committee of each house of the Legislature whenever the Respiratory Care Board of California proposes or adopts an increase in any fee, and shall specify the rationale and justification for that increase.

§ 3775.5. Application and renewal fee for inactive license

The fee for an inactive license shall be the same as the renewal fee for the practice of respiratory care as specified in Section 3775.

§ 3776. Payment of fees following return of check for insufficient funds

(a) Any person who submits to the board a check for fees that is returned unpaid shall pay all subsequent required fees by cashier's check or money order.

(b) Any person who submits to the board a check for fees that is returned unpaid shall be assessed an additional processing fee as determined by the board.

§ 3777. Nonrenewal of license for failure to pay fees

Where an applicant is issued a license to practice respiratory care, and it is later discovered that all required fees have not been paid, the license shall not be renewed or reinstated unless all past and current required fees have been paid.

California Code of Regulations Title 16, Division 13.6

§1399.300. Citation.

These regulations shall be cited and referred to as the "Respiratory Care Regulations."

§1399.301. Location of Office.

The principal office of the Respiratory Care Board of California is located at 1426 Howe Avenue, Suite 48, Sacramento, CA 95825-3234. [current address as of April 2001 is 444 North 3rd Street, Suite 270, Sacramento, CA 95814.]

§1399.302. Definitions.

Unless the context otherwise requires, the following definitions shall apply:

(a) "Board" means the Respiratory Care Board of California.

(b) "B&PC" means the Business and Professions Code.

(c) "Act" means the Respiratory Care Practice Act.

(d) "Direct Supervision" means assigned to a currently licensed respiratory care practitioner who is on duty and immediately available in the assigned patient area.

§1399.303. Delegation of Authority.

(a) Except for those powers reserved exclusively for the "agency itself" under the Administrative Procedure Act (Section 11500 et seq. of the Government Code), the board delegates and confers upon the executive officer of the board, or in his or her absence, the president of the board, the power and discretion to receive and file accusations; issue notices of hearings, statements to respondents and statements of issues; receive and file notices of defense; determine the time and

place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; calendar cases for hearing and perform other functions necessary to the businesslike dispatch of the business of the board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code.

(b) The executive officer is further authorized, subject to the approval of the board, to investigate and evaluate each applicant for licensure under the Act, and to issue or deny a license in conformance with the provisions of the B&PC, the Act, this chapter, and disciplinary guidelines.

§1399.304. Filing of Address.

Each person holding a license as a respiratory care practitioner or any person with an application for licensure pending, shall file, in writing, with the board his or her proper and current mailing address, and shall give written notice within 14 days, to the board at its Sacramento office of any and all changes of address, giving both the old and new address.

§1399.305. Officers.

(a) The election of a president and vice president shall be held annually at the last regularly-scheduled meeting of the board during the calendar year. The newly-elected officers shall assume office on the first day of the calendar year following the election.

(b) In the case of a vacancy occurring in either of the offices, the vacancy may be filled at any regular or specially-called meeting. The member filling the vacancy shall serve the remainder of the one year term.

§1399.320. Applications.

(a) Documentation related to the initial application process shall not be submitted more than 30 days prior to the receipt of an initial application. If an application is not received within 30 days, the submitted material will be destroyed.

§1399.321. Abandonment of Applications.

(a) Applicants shall have one year from the time an initial application is received to complete the application process. If the application process is not completed within the one-year period, the applicant must re-submit documentation.

§1399.340. Failure on Examinations.

For purposes of B&PC section 3739, the "next available examination" shall mean the board's state licensing examination, or the National Board for Respiratory Care, Inc. entry level certification examination for respiratory therapy. Failure of either examination, or failure to take either examination as scheduled except for due cause, shall result in termination of the privilege to work as a "respiratory care practitioner applicant".

§1399.350. Continuing Education Required.

(a) Each respiratory care practitioner (RCP) is required to complete 15 hours of approved continuing education (CE) every 2 years.

(b) To renew the license, each RCP shall report compliance with the CE requirement. Supporting documentation, showing evidence of compliance with each requirement under Section 1399.352, shall be submitted only if requested by the board.

(c) CE supporting documentation shall be retained by the licensee for a period of four years.

§1399.351. Approved CE Programs.

(a) Any course or program meeting the criteria set forth in Section 1399.352 will be accepted by the board for CE credit.

(b) Passing an official credentialing or proctored self-evaluation examination shall be approved for CE as follows:

(1) Certified Respiratory Therapy Technician (CRTT) - 15 CE hours if not taken for licensure;

(2) Registered Respiratory Therapist (RRT) - 15 CE hours if not taken for licensure;

(3) Certified Pulmonary Function Technologist (CPFT)-15 CE hours;

(4) Registered Pulmonary Function Technologist (RPFT)-15 CE hrs;

(5) Perinatal/Pediatric Respiratory Care Specialist - 15 CE hours;

(6) Advanced Cardiac Life Support (ACLS); - number of CE hours

to be designated by the provider;

(7) Neonatal Cardiac Life Support (NCLS); - number of CE hours to be designated by the provider; and

(8) Pediatrics Advanced Life Support (PALS) - number of CE hours to be designated by the provider.

(c) A licensee cannot receive 15 CE hours for the National Board for Respiratory Care's new re-certification examinations if he/she previously received CE credit for the exam, received the CRTT at the time of taking the California licensing examination, or used the CRTT/RRT exam as the basis for satisfying his/her licensing examination requirement.

(d) The board shall have the authority to audit programs offering CE for compliance with the criteria set forth in Section 1399.352.

§1399.352. Criteria for Acceptability of Courses.

Acceptable courses and programs shall meet the following criteria:

(a) The content of the course or program shall be relevant to the scope of practice of respiratory care. At least two-thirds of the required continuing education hours shall be related to clinical practice. The content of a course or program may also include:

(1) Those activities relevant to specialized aspects of respiratory care, which activities include education, supervision, and management.

(2) Health care cost containment or cost management.

(3) Preventative health services and health promotion.

(4) Required abuse reporting.

(5) Other subject matter which is directed by legislation to be included in CE for licensed healing arts practitioners.

(b) The faculty shall be knowledgeable in the subject matter as evidenced by:

(1) A degree from an accredited college or university and verifiable experience in the subject matter, or

(2) Teaching and clinical experience in the same or similar subject matter.

(c) Educational objectives shall be listed.

(d) The teaching methods shall be described, e.g., lecture, seminar, audio-visual, simulation.

(e) Evaluation methods shall document that the objectives have been met.

(f) Course organizers shall maintain a record of attendance of participants for four years.

(g) All program information by providers of CE shall state: "This course meets the requirements for CE for RCPs in California."

(h) All course providers shall provide documentation to course participants that includes participant name, RCP number, course title, number of hours of CE, date(s), and name and address of course provider.

(i) All course providers shall maintain documentation of participant's completion for a period of four years.

§1399.353. Audit and Sanctions for Noncompliance.

(a) The board shall audit a random sample of RCPs for compliance with the CE requirements.

(b) If documentation of the CE requirement is improper or inadequate, the license becomes inactive. The practice of respiratory care, or representation that one is an RCP, is prohibited while the license is inactive. Practice on an inactive license shall constitute grounds for appropriate disciplinary action pursuant to the B&PC.

(c) Misrepresentation of compliance shall constitute grounds for disciplinary action.

(d) Documentation supporting compliance with CE requirements shall be available to the board upon request during the four year period following relicensure.

§1399.354. Waiver of Requirements.

At the time of making application for renewal of a license, an RCP may request a waiver from completion of the CE requirements. The board shall grant a waiver only if the RCP verifies in writing that, during the two-year period immediately prior to the expiration date of the license, he or she:

(a) Has been absent from California for at least one year because of military service reasonably preventing completion of the CE requirements; or

(b) Has been prevented from completing the CE requirements for reasons of health or other good cause which includes:

(1) Total medical disability of the RCP for at least one year; or

(2) Total medical disability of an immediate family member for at least one year where the RCP has total responsibility for the care of that family member.

Verification of the disability under subsection (b) shall be verified in writing by a licensed physician and surgeon.

§1399.355. Renewal After Inactive or Delinquent Status.

(a) For the renewal of an expired license more than two years and within three years of the date of expiration, the applicant shall provide documentation of completion of the required 30 hours of CE during the four-year period preceding the application for renewal.

(b) For the renewal of an expired license two years or less from the expiration date, the applicant shall provide documentation of completion of the required 15 hours of CE during the two-year period preceding the application for renewal.

(c) After a license has been expired for three years, it will be cancelled and the applicant must make application just as for an initial license and meet all the current criteria required for licensure.

§1399.356. License Status.

A licensee may request, in writing, to change the status of his/her current and valid license as follows:

(a) To change the status of a license from active to inactive, the licensee shall make application to the board for such a change.

(b) To change the status of a license from inactive to active, the licensee shall request such in writing, provide documentation of completion of 15 hours of CE during the two-year period preceding the request for active status.

§1399.370. Substantial Relationship Criteria

For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Act.

(b) Conviction of a crime involving fiscal dishonesty, theft or larceny.

(c) Conviction of a crime involving driving under the influence or reckless driving while under the influence.

(d) Conviction of a crime involving harassment or stalking as defined by the Penal Code.

(e) Conviction of a crime involving lewd conduct, prostitution or solicitation thereof, or pandering and/or indecent exposure, as defined by the Penal Code.

§1399.372. Rehabilitation Criteria for Suspensions or Revocations.

When considering the denial, petition for reinstatement, modification of probation, suspension or revocation of an RCP license, the board will consider the following criteria in evaluating the rehabilitation of such person and his or her eligibility for a license:

(a) The nature and severity of the act(s) or offense(s).

(b) The total criminal record.

(c) The time that has elapsed since the commission of the act(s) or offense(s).

(d) Compliance with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against such person.

(e) Evidence of any subsequent act(s) or crime(s) committed.

(f) Any other evidence of rehabilitation submitted that is acceptable to the board, including:

(1) Successful completion of respiratory care courses with a "C" or better, as determined by the institution;

(2) Active continued attendance or successful completion of rehabilitative programs such as 12-step recovery programs or psychotherapy counseling;

(3) Letters relating to the quality of practice signed under penalty of perjury from licensed health care providers responsible for the supervision of his/her work.

(g) Statements, letters, attestations of good moral character, or references relating to character, reputation, personality, marital/family status, or habits shall not be considered rehabilitation unless they relate to quality of practice as listed in section (f).

§1399.373. Permit Processing Times.

"Permit" as defined by the Permit Reform Act of 1981 means any license, registration permit or any other form of authorization required by a state agency to engage in a particular activity or act. Processing times for the board's respiratory care practitioner program are set forth below. The actual processing times apply to those applicants who have passed all appropriate examinations.

Maximum time for notifying the applicant in writing that the application is complete and accepted for filing, or that the application is deficiency and what specific information is required: 30 days

Maximum time after receipt of a complete application to issue or deny: 150 days

Actual processing time for issuance of a license based on prior two years:

Minimum: 70 days Median: 242 days Maximum: 344 days

§1399.374. Disciplinary Guidelines

In reaching a decision on the disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Respiratory Care shall consider the disciplinary guidelines entitled "Disciplinary Guidelines" [8/97 Edition] which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Respiratory Care Board in its sole discretion determines that the facts of the particular case warrant such a deviation-for example: the presence of mitigating factors; the age of the case; evidentiary problems.

§1399.375. Citation and Fine.

(a) The Executive Officer of the board or any person designated by the Executive Officer is authorized to issue citations containing an administrative fine for violation of B&PC, section 3761. A citation may be issued to any person who represents himself/herself to be a respiratory care practitioner who does not possess a valid and current license as a respiratory care practitioner.

(b) Each citation shall be in writing and shall describe with particularity the nature and facts of the violation including a reference to the statute alleged to have been violated. The citation shall be served upon the individual personally or by certified mail.

(c) The amount of the fine is prescribed by B&PC, section 3761(c), and shall be \$1,000.

(d) The sanctions authorized under this section shall be separate from and in addition to any other administrative discipline, civil remedies, or criminal penalties.

(e) Failure to pay a fine within 150 calendar days from the date of assessment, unless the citation is being appealed, shall result in further legal action by the board to collect the fine. If the fine has been assessed against a person who formerly held a respiratory care license and the person has failed to pay the fine and the time for appeal has passed, the license shall not be renewed unless the person pays the full amount of the fine and any and all other fees for renewal.

(f) Administrative fines collected pursuant to this section shall be deposited in the Respiratory Care Board's special fund.

§1399.376. Citation Review.

(a) The person cited may, within ten (10) calendar days after the date of service of the citation, notify the executive officer, in writing, of his or her request for a citation review by a designated committee of the board regarding the acts charged in the citation. Notification shall be through the United States Postal Service by certified or registered mail.

(b) The committee shall hold, within 240 calendar days from the receipt of the request, a citation review with the person cited or his or her legal counsel or other authorized representative. At the conclusion of the citation review, the committee may affirm, modify or dismiss the citation, including any fine levied. The committee shall state in writing the reasons for its action and serve a copy of its findings and decision on the person cited within 21 calendar days of the date of the citation review. This decision shall be deemed to be a final order of the board with regard to the citation issued, including the fine levied.

Article 8. Fees

§1399.380. Fee Schedule.

The following schedule of fees is hereby adopted pursuant to Sections 3775 and 3775.5 of the B&PC:

- (a) Application Fee \$ 200
- (b) Application Fee [pursuant to Section 3740(b)] \$ 250
- (c) Examination/Re-examination Fees.
(These fees are set pursuant to subdivision (b) of B&PC section 3775.)
- (d) Initial license fee \$ 200
[This fee is prorated at \$8 per month for a period between 6 and 18 months.]
- (e) Renewal Fee
for licenses expiring on or after July 1, 1996 \$ 165
for licenses expiring on or after January 1, 1997 \$ 182
for licenses expiring on or after January 1, 1998 \$ 200
[B&P, Section 3775, subdivision (d) amends this regulation for licenses expiring on or after 1/1/99. The current fee of \$230 was implemented on 1/1/02]
- (f) Delinquency fee.
(This fee is set pursuant to subdivision (e) of B&PC section 3775.)
- (g) Inactive license fee.
(This fee is set pursuant to B&PC section 3775.5.)
- (h) Duplicate license or wall certificate fee \$ 75
[B&P, Section 3775, subdivision (f), supersedes this regulation. This fee is \$25 as of 1/1/02]
- (i) Endorsement fee \$ 50
[B&P, Section 3775, subdivision (g) supersedes this regulation. This fee is \$75 as of 1/1/02]
- (j) Transcript review fee. *[This fee was repealed by statute]*
(This fee is set pursuant to subdivision (d) of B&PC section 3775.1.)

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Current California law can be found at www.leginfo.ca.gov
Current California regulations can be found at www.oal.ca.gov